

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KAMALA ROSE-HOLLIDAY,  
M.D.,

Plaintiff,

v.

SUN LIFE ASSURANCE  
COMPANY OF CANADA,

Defendant.

C20-1249 TSZ

ORDER

THIS MATTER comes before the Court on Defendant Sun Life Assurance Company of Canada's (Sun Life) Motion to Dismiss Plaintiff's Complaint, docket no. 9. Having reviewed all papers filed in support of, and in opposition to, the motion, the Court enters the following order.

**Background**

Plaintiff Kamala Rose-Holliday, M.D. worked as an emergency room physician for Emergency Physicians at Overlake. Ex. 2 to Buhite Decl. (docket no. 10-2 at 2). Sun Life issued a Group Long Term Disability (LTD) Policy to Emergency Physicians (Sun Life Plan). Complaint at 2. The Sun Life Plan contained a contractual limitations period,

1 which provided that “[n]o legal action may start . . . more than 3 years after the time  
2 Proof of Claim is required.” Plan, Ex. 1 to Buhite Decl. (docket no. 10-1 at 32). The Sun  
3 Life Plan further provided that a claimant must submit “Proof of Claim” “no later than 90  
4 days after the end of the Elimination Period.” Id. at 34. The Elimination Period began on  
5 the date of disability and was 90 days long. Id. at 4, 9. Additionally, if Sun Life  
6 requested, a claimant must provide proof of continued disability and regular continuous  
7 care by a physician within 30 days of the request. Id. at 34.

8 Plaintiff suffered from a medical condition that inhibited her ability to work. Ex. 2  
9 to Buhite Decl. at 2. Able to work on only a part-time basis, she filed a partial disability  
10 claim with Sun Life. Id. Sun Life sent Plaintiff a letter on January 12, 2012 explaining  
11 the compensation structure of her claim, the date of disability, and her partial disability  
12 benefits. Id. at 2–7. The letter further informed Plaintiff of her right to appeal the  
13 decision. Id. at 6–7. The following day, Plaintiff called Sun Life concerned that it had  
14 miscalculated her benefits. Ex. 4 to Buhite Decl. (docket no. 10-4 at 2). Sun Life told  
15 Plaintiff that if she disagreed with how it calculated her partial earnings, she would need  
16 to file an appeal. Id. Plaintiff did not appeal.

17 Plaintiff continued to receive monthly partial disability benefits through  
18 September 2019 (when she became totally disabled). Complaint at 3; Plaintiff’s  
19 Response (docket no. 12 at 3). In October 2019, Plaintiff’s attorney contacted Sun Life  
20 and stated that she believed it had miscalculated Plaintiff’s disability earnings. Ex. 2 to  
21 Crawford Decl. (docket no. 13 at 51–52). Sun Life reviewed Plaintiff’s file and told her  
22 that it determined its calculations were correct. Ex. 16 to Buhite Decl. (docket no. 10-16  
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1 at 2–4). Plaintiff then filed an appeal, which Sun Life denied on August 17, 2020.  
2 Ex. 17 to Buhite Decl. (docket no. 10-17 at 2–8); Ex. 18 to Buhite Decl. (docket  
3 no. 10-18 at 2–9.)

4 Two days later, on August 19, 2020, Plaintiff filed this lawsuit. Sun Life moves to  
5 dismiss, arguing that the contractual limitations period bars Plaintiff’s suit.

## 6 **Discussion**

### 7 **A. Consideration under Rule 56**

8 Plaintiff asserts that because Sun Life’s Motion to Dismiss presents matters  
9 outside the pleading, the Court should treat it as motion for summary judgment under  
10 Rule 56. Because Sun Life does not object, the Court will treat Sun Life’s motion as one  
11 for summary judgment (Motion).

### 12 **B. Summary Judgment Standard**

13 The Court shall grant summary judgment if no genuine issue of material fact exists  
14 and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).  
15 The moving party bears the initial burden of demonstrating the absence of a genuine issue  
16 of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A fact is material if  
17 it might affect the outcome of the suit under the governing law. Anderson v. Liberty  
18 Lobby, Inc., 477 U.S. 242, 248 (1986). To survive a motion for summary judgment, the  
19 adverse party must present affirmative evidence, which “is to be believed” and from  
20 which all “justifiable inferences” are to be favorably drawn. Id. at 255, 257. When the  
21 record, however, taken as a whole, could not lead a rational trier of fact to find for the  
22 non-moving party, summary judgment is warranted. See Beard v. Banks, 548 U.S. 521,  
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1 529 (2006) (“Rule 56 ‘mandates the entry of summary judgment, after adequate time for  
2 discovery and upon motion, against a party who fails to make a showing sufficient to  
3 establish the existence of an element essential to that party’s case, and on which that  
4 party will bear the burden of proof at trial.’” (quoting Celotex, 477 U.S. at 322)).

### 5 **C. Contractual Limitations Period**

6 The Employee Retirement Income Security Act (ERISA) does not provide a  
7 statute of limitations for actions to recover benefits. Heimeshoff v. Hartford Life &  
8 Accident Ins. Co., 571 U.S. 99, 105 (2013). The parties, however, may provide a  
9 limitations period by agreement. Id. at 107. A court must give effect to an ERISA plan’s  
10 limitations provision unless it determines either that the period is unreasonably short, or  
11 that a controlling statute prevents the limitations provision from taking effect. Id. at 109;  
12 see also Faciane v. Sun Life Assurance Co. of Can., 931 F.3d 412, 417–18 (5th Cir.  
13 2019).

14 The Sun Life Plan had a three-year limitations period for filing legal action that  
15 began 90 days after the end of the Elimination Period, which was 90 days following the  
16 date of disability. Thus, Plaintiff had three years and 180 days from the date of her  
17 disability to file a legal action. Plaintiff does not dispute the date of disability was  
18 January 1, 2011. Accordingly, the Court accepts this as the date of disability and  
19 determines that, to comply with the contractual limitations period, Plaintiff had to file  
20 legal action by June 30, 2014. Because Plaintiff did not file this lawsuit until August 19,  
21 2020, and does not argue that the limitations period is unreasonably short or that a  
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1 controlling statute prevents it from taking effect, the Sun Life Plan’s limitations period  
2 bars her action.

3 Plaintiff claims that the Sun Life Plan’s contractual limitations period does not  
4 apply to benefit miscalculations. But the contract language is broad, providing that “[n]o  
5 legal action may start . . . more than three years after the time Proof of Claim is required.”  
6 Plan, Ex. 1 to Buhite Decl. (docket no. 10-1 at 32). This language encompasses legal  
7 actions regarding benefit miscalculations.<sup>1</sup>

8 Plaintiff argues in the alternative that if the Sun Life Plan’s contractual limitations  
9 period applies to benefit miscalculations, it did not start running until Sun Life last  
10 required Proof of Claim for her continued disability, i.e., October 11, 2019. But reading  
11 the Sun Life Plan as a whole,<sup>2</sup> the language in the contractual limitations clause refers to  
12 the original Proof of Claim required 90 days after the Elimination Period, not the Proof of  
13 Claim that Sun Life may or may not require to show continued disability or continuous  
14 care by a physician. To accept Plaintiff’s interpretation would treat the Sun Life Plan as  
15 an installment contract and start a new limitations period every time that Sun Life  
16 requested Proof of Claim. Courts, however, have rejected this interpretation and have  
17 instead determined that such a “theory of accrual is inapplicable where the alleged wrong  
18 is based on an alleged one-time miscalculation of ERISA benefits of which the plaintiff is

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21 <sup>1</sup> Here, it is undisputed that Sun Life calculated Plaintiff’s partial disability earnings in the same way  
22 throughout her claim. Nothing in this order addresses whether the contractual limitations period would  
23 apply should an insurance company change its calculation method during a claim.

<sup>2</sup> See Dupree v. Holman Pro. Counseling Ctr., 572 F.3d 1094, 1097 (9th Cir. 2009) (stating that courts  
must construe ERISA provisions such that they are consistent with the plan as a whole).

1 aware.” Riley v. Metro. Life Ins. Co., 744 F.3d 241, 245–46 (1st Cir. 2014) (“We agree  
 2 with those circuits which, in like circumstances, have concluded that an ERISA cause of  
 3 action accrues when, after a claim for benefits is made and a specific sum is sought, the  
 4 ERISA plan repudiates the claim or the sum sought, and that rejection is clear and made  
 5 known to the beneficiary.” (citing Miller v. Fortis Benefits Ins. Co., 475 F.3d 516, 520–  
 6 21 (3d Cir. 2007); Union Pac. R.R. Co. v. Beckham, 138 F.3d 325, 330 (8th Cir. 1998);  
 7 Daill v. Sheet Metal Workers’ Loc. 73 Pension Fund, 100 F.3d 62, 66 (7th Cir. 1996);  
 8 Novella v. Westchester County, 661 F.3d 128, 147 (2d Cir. 2011))). The Ninth Circuit  
 9 has rejected a similar claim. See Pisciotta v. Teledyne Indus., Inc., 91 F.3d 1326 (9th Cir.  
 10 1996).

11 Plaintiff has not cited any circuit authority that has used an “installment contract  
 12 accrual theory.” Plaintiff’s claim arises from a single action related to Sun Life’s original  
 13 benefits decision. Plaintiff knew how Sun Life was calculating her disability benefits in  
 14 January 2012, but she waited over seven years to file an appeal, and over eight years to  
 15 take legal action.<sup>3</sup>

16 Plaintiff next argues that Sun Life’s “conduct and statements . . . annul its claim  
 17 that the limitations period for ‘any’ lawsuit ran in June 2014.” Plaintiff’s Response  
 18 (docket no. 12 at 16). Specifically, she asserts that statements Sun Life made in 2019

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 20 <sup>3</sup> Plaintiff relies on several Ninth Circuit cases, namely N. Cal. Retail Clerks Unions & Food Emp. Joint  
 21 Pension Tr. Fund v. Jumbo Mkts., Inc., 906 F.2d 1371 (9th Cir. 1990), Wetzel v. Lou Ehlers Cadillac  
 22 Grp. Ins. Program, 222 F.3d 643 (9th Cir. 2000), Chuck v. Hewlett Packard Co., 455 F.3d 1026 (9th Cir.  
 23 2006), Wise v. Verizon Comm’cns, Inc., 600 F.3d 1180 (9th Cir. 2010), and Withrow v. Halsey, 655 F.3d  
 1032 (9th Cir. 2011); but these cases are not on point because they do not involve parties that have agreed  
 to a limitations period.

1 regarding her rights to appeal and file an ERISA action show Sun Life’s intent to  
2 preclude the contractual limitations period from running until Sun Life last requests a  
3 Proof of Claim. But the Court has already rejected this interpretation of the contractual  
4 limitations clause. To the extent Plaintiff argues that the 2019 statements revived the  
5 limitations period, the Court rejects this argument because Sun Life made the statements  
6 long after the contractual limitations period had run. See Gordon v. Deloitte & Touche,  
7 LLP Grp. Long Term Disability Plan, 749 F.3d 746, 751 (9th Cir. 2014) (noting that the  
8 reopening of a claim does not revive a limitations period because “[r]eviving a limitation  
9 period when an insurance company reconsiders a claim after the limitation period has run  
10 would discourage reconsideration by insurers even when reconsideration might be  
11 warranted”); see also Faciane, 931 F.3d at 423–24. Plaintiff’s arguments to the contrary  
12 are without merit.<sup>4</sup>

### 13 **Conclusion**

14 For the foregoing reasons, the Court ORDERS:

15 (1) Sun Life’s Motion, docket no. 9, is GRANTED;

16 (2) The Clerk is directed to enter judgment consistent with this Order; and

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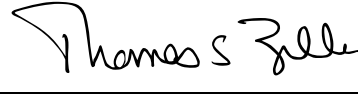
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20 <sup>4</sup> Plaintiff cites Spindex Physical Therapy USA, Inc. v. United Healthcare of Ariz., Inc., 770 F.3d 1282  
21 (9th Cir. 2014) to argue that the contractual limitations period does not apply because Sun Life has not  
22 shown that it advised her of it. But Spindex concerned a limitations period “buried deep” in a summary  
23 plan description (SPD). Id. at 1295. The present case does not involve an SPD and Plaintiff does not  
argue that Sun Life impermissibly buried the limitations period.

1 (3) The Clerk is directed to send a copy of this Order to all counsel of record.

2 IT IS SO ORDERED.

3 Dated this 8th day of January, 2021.

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5 THOMAS S. ZILLY  
6 United States District Judge  
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